WP(C) 1814/2007
BEFORE
HON'BLE JUSTICE B.K. SHARMA

This writ petition has been filed making a challenge to the particular tender notice issued by the respondent Board on the ground that the prayer of the petitioner for extension of the earlier lease period has not been considered.

The petitioner was settled with the market in question, namely Paglastan Daily Market, for the year 2006-2007. Just at the eve of expiry of the lease period, the petitioner made Annexure-4 representation dated 09.02.07 to Executive Officer, Bongaigaon Municipal Board seeking extension of the lease period on the ground that the market remained frequently closed resulting financial loss to the petitioner. The aforesaid representation was followed by Annexure-5 representation dated 26.03.07 addressed to the Director of Municipal Administration Department, Assam praying for extension of period of lease for another one year, i.e. upto 31.03.08. The grounds for such extension was the purported frequent closure of the market due to various bandh called by the political and non-political organizations.

The writ petition was filed at the time when the Annexure-7 tender notice dated 07.02.07 was issued for fresh settlement of the market for the period of 2007-08. Thus, it will be seen that the prayer for extension of the lease period was made by the petitioner only after issuance of tender notice. Only ground assigned in the writ petition is the purported frequent closure of the market due to bandhs given by the political and non-political parties. In the representation dated 26.03.07 the petitioner referred to his letter addressed to the Executive Officer by which the prayer for extension was made. Such prayer was made before depositing the last kist money. According to the petitioner instead of considering the prayer of the petitioner fresh tender process was initiated.

The respondents have filed counter affidavit. In the affidavit, it has been stated that the petitioner failed to deposit the kist money inspite of service of notice on him. It has been stated that by not depositing the kist money the petitioner has violated the terms and conditions of the tender notice and the settlement. In this connection, the respondents have referred to Annexures A, B and C notice dated 16.09.96, 06.01.07 and 20.02.07 respectively by which the petitioner was reminded his duty to deposit the kist money. By Annexure-C letter dated 20.02.07, the petitioner was informed to deposit the last kist money of Rs. 52,500/- within the stipulated period intimating that upon failure to deposit the same, the settlement would be cancelled.

Mr. D. Majumdar, learned counsel for the petitioner submits that since the petitioner had made application for extension of the lease period, it was incumbent on the part of the respondents to consider and dispose of the same before making any settlement pursuant to the impugned tender notice. At this stage, Mr. M.U. Mahmud, learned counsel for the Municipal Board submits that in fact, the petitioner was informed about the rejection of his prayer by the Board by its letter dated 12.02.07. In the letter, it was intimated that since the petitioner failed to deposit the aforesaid amount of Rs. 52,500/-, there was no question of granting further extension of lease period. Learned counsel for the petitioner has questioned the validity of disposal of the representation by the Municipal Board since the prayer was made to the Director of Municipal Administration Department on 26.03.07.

The petitioner as per own showing made the representation dated 09.02.07 to the Executive Officer, Bongaigaon Municipal Board. In that view of the matter, there is nothing wrong in disposing of the representation by the said authority by its letter dated 12.02.07. Mr. Majumdar, learned counsel for the petitioner submits that the petitioner has not been furnished with the copy of the letter dated 12.02.07.

I have considered the submissions made by the learned counsel for the parties and the materials on record. The petitioner has not denied the contentions raised in the affidavit in opposition. If the petitioner is defaulter in paymen

t of kist money, there is no question of granting extension of lease period by incurring loss. The writ petition was filed at the time that the fresh tender process was initiated. As per normal rule, market etc. should be settled through tender process. The respondents have not been able to make settlement in view of the interim order passed by this Court. Mr. Mahmud, learned counsel for the Board submits that in view of the stalemate created by the petitioner, the Board has suffered loss of revenue. As per the own showing of the petitioner vide Annexure-4 letter dated 09.02.07, the petitioner did not deposit the kist money and he undertook to deposit the same on 15.02.07. It is submitted that the petitioner has not deposited the said kist money and instead approached this Court by filing the instant writ petition.

In view of the above, I do not find any merit in the writ petition and accordingly it is dismissed. The respondent Board shall finalise the tender process as expeditiously as possible. Interim order passed earlier stands vacated. The respondent Municipal Board will be at liberty to realize the aforesaid kist money of Rs. 52,500/- from the petitioner in accordance with law.